MAJLIS DAERAH HULU SELANGOR v. UNITED PLANTATIONS BHD

FEDERAL COURT, PUTRAJAYA
NALLINI PATHMANATHAN FCJ
HASNAH MOHAMMED HASHIM FCJ
MARY LIM FCJ
[CIVIL APPEAL NO: 01(f)-27-09-2019(B)]
14 JULY 2021

LOCAL GOVERNMENT: *Rates – Annual value – Power to impose rates on holdings located within area of local authority – Holdings originally excluded from jurisdiction of local authority – Altered by way of re-boundary exercise – Whether included in valuation list – Whether 'rateable holding' – Whether preparation and completion of valuation list in accordance with mandatory requirements of Local Government Act 1976 – Whether extension and amendment of valuation list to include holdings completed – Whether new valuation list prepared – Whether valuation list valid*

The appellant, Majlis Daerah Hulu Selangor ('MDHS'), posed three questions of law directly to the Federal Court pursuant to s. 145(5) of the Local Government Act 1976 ('Act') concerning the power of the appellant, as the local authority for the area of Hulu Selangor, to impose rates on holdings located within its area of local authority under Part XV of the Act. The respondent, United Plantations Berhad ('UPB'), was the registered owner of 2,889 hectares of holdings upon which it carries on an oil palm plantation business ('UPB holdings'). A notice of a New Valuation List 1996 was published in the Government of Selangor *Gazette* by way of notification dated 21 December 1995 informing that the valuation list will be revised on 30 December 1995. The UPB holdings were neither rated nor included in the valuation list at this point in time. By the Government of Selangor *Gazette* Notification dated 26 June 2008, the boundaries of the Hulu Selangor District Council were altered to include the UPB holdings with effect from 3 July 2008. On 11 July 2016, MDHS issued a notice of extension of valuation list prepared for the year 1996 giving notice that 'with the approval of the State Authority, the valuation list prepared for the year 1996 which shall remain in force until 31 December 2016 is hereby extended to continue to remain in force until 31 December 2019'. On 17 May 2018, MDHS issued to UPB a notice of amendment of valuation list under s. 144 of the Act, informing UPB that it was amending the valuation list and that, with effect from 1 July 2018, the annual value of the UPB holdings shall be RM17,351,300 and the annual rates imposed shall be RM173,513. UPB was given until 11 June 2018 to object against the matters set out in the notice. Prior to the notice of amendment of 17 May 2018, MDHS never imposed or collected rates from UPB and up till the notice of amendment, never

informed UPB of the existence of the valuation list, whether revised or amended. UPB objected to the notice of amendment citing, *inter alia*, that MDHS never provided any services, facilities or amenities in relation to the UPB holdings. Despite UPB's objections, MDHS maintained its decision and hence, UPB paid the annual rate imposed under protest and appealed to the High Court. The High Court held that (i) the notice of amendment was void and *ultra vires* the Act; and (ii) the amendment to the valuation list for 1996 to include the UPB holdings which were not previously rated under the Act was illegal. The High Court Judge found that there was non-compliance of the procedural requirements as mandated by ss. 137 and 141 of the Act which occasioned in the finding of invalidity. Hence, this appeal.

Held (dismissing appeal with costs)
Per Mary Lim FCJ delivering the judgment of the court:

(1) The rates that any local authority may impose on any holding within its jurisdiction is only that which is 'just and proper', and to this end, local authorities may divide its area into two or more parts and impose differential rates due to the actual usage of the holding or part of the holding concerned. Rates are thus imposed on holdings located in the jurisdictions of each local authority. 'Holding' is specifically defined in s. 2. Except for the holdings that are exempted from the imposition of rates, all other holdings within the jurisdiction of the local authority are subjected to the imposition of rates. Holdings which are included in the valuation list are known as 'rateable holdings'. Section 2 defines a 'rateable holding' as a holding which is subject to the payment of a rate made and levied under the Act. Until a holding falls within the valuation list, it remains a holding. (paras 35-38)

(2) The actual determination of annual rates by the State Authority is statutorily structured. Each local authority is expressly required by s. 137 of the Act to prepare a valuation list for all holdings which are not exempted from rates. Under s. 141, the local authority is expected to give notice, not just by *Gazette* notification, but by way of advertisement in two local newspapers, one of which must be in the national language that it has prepared or adopted such a valuation list. A public inspection and objection process with appropriate time-periods is then conducted. Once prepared, the valuation list is supposed to endure for five years. Every five years, each local authority is mandatorily required under s. 137(3), to prepare a new valuation list containing the same particulars as in ss. 137(1)(a) to (d). Until the new valuation list is prepared and completed, the existing valuation list remains in force until it is superseded by a new valuation list. Where that cannot be done, and arguably, for cogent and proper reasons, the State Authority may extend that period of five years for the preparation and completion of the new valuation list under s. 137(2) of the Act. (paras 42, 45, 47 & 50)

(3) No local authority may use a valuation list for an indeterminable period and under any guise or misguided reading of its powers and obligations. It is their single responsibility to see to the preparation of a valuation list and to complete such list in accordance with the mandatory process as laid down in Part XV of the Act before the local authority is authorised to collect any rates. This extends to the power of amendment of the valuation list. The amendment of the valuation list may only be undertaken for the reasons and in the circumstances specified in s. 144(1) of the Act and save for the circumstances under s. 144(1)(e), the amendment may only be in respect of a rateable holding. Once properly amended under s. 144, the subsisting valuation list, together with the amendments, will remain in force until it is superseded by a new valuation list. (paras 52, 55, 56 & 62)

(4) In the present appeal, the valuation list prepared on 14 December 1995 for the year 1996 was notified, after 21 years, to remain in force until 31 December 2016, and by the same notification, to be extended to continue to remain in force until 31 December 2019. The valuation list was amended two years later, on 17 May 2018, under s. 144 of the Act to include the UPB holdings, which was not in the 1996 valuation list following the re-boundary exercise. Other than these two exercises of 'extension' and 'amendment', MDHS never completed, let alone prepared, any new valuation list after 1996. (paras 64-67)

(5) What is envisaged under s. 137(3) is an extension of the time for the preparation and completion of a new valuation list; not an extension of the validity of the existing valuation list. The notice of extension was clearly without mandate or force of law as there was no extension of the time period for preparing and completing a new valuation list for the entire period between 1996 and 2019 or until the notification in 2016. The non-completion of a new valuation list for that whole period was a serious non-compliance of the clear and mandatory provisions of the Act. The valuation list of 1996 had suffered from the gross inactivity on the part of MDHS and had indeed lapsed. Therefore, the notice of extension dated 11 July 2016 seeking to extend the valuation list for the year 1996 effectively until 2019 was clearly invalid and of no effect. (paras 70-72 & 75)

(6) The amendment conducted in 2016 to include the UPB holdings was also invalid because the UPB holdings was a new holding and did not fall within the definition of rateable holding as defined in s. 2. In any case, MDHS did not specify under which limb of s. 144(a) to (f) that the amendment was sought. The court was satisfied that the amendment did not fall under any of these limbs. Although State Authorities may redraw the boundaries of any local authority within its jurisdiction, local authorities cannot begin to impose rates on holdings which hitherto were outside their jurisdiction. The local authority is obliged to come out

with a new valuation list whenever there is a re-boundary exercise or at least to wait till the next new valuation list before it may impose its rates on holdings which newly fall within its jurisdiction. (paras 76 & 77)

Bahasa Melayu *Headnotes*

Perayu, Majlis Daerah Hulu Selangor ('MDHS'), mengemukakan tiga soalan undang-undang secara terus ke Mahkamah Persekutuan menurut s. 145(5) Akta Kerajaan Tempatan 1976 ('Akta') berkaitan kuasa perayu sebagai pihak berkuasa tempatan untuk Kawasan Hulu Selangor untuk mengenakan taksiran atas pegangan yang terletak dalam kawasan pihak berkuasa tempatan bawah Bahagian XV Akta. Responden, United Plantations Berhad ('UPB'), adalah pemilik berdaftar 2,889 hektar pegangan yang menjalankan perniagaan ladang kelapa sawit di tanah itu ('pegangan UPB'). Satu notis Senarai Nilaian Baharu 1996 diterbitkan dalam *Warta* Kerajaan Selangor melalui pernyataan bertarikh 21 Disember 1995 memaklumkan bahawa senarai nilaian akan disemak pada 30 Disember 1995. Pegangan UPB belum ditaksir atau dimasukkan dalam senarai nilaian pada ketika ini. Melalui *Warta* Kerajaan Selangor bertarikh 26 Jun 2008, sempadan-sempadan Majlis Daerah Hulu Selangor diubah untuk memasukkan pegangan UPB berkuat kuasa dari 3 Julai 2008. Pada 11 Julai 2016, MDHS mengeluarkan notis lanjutan senarai nilaian yang disediakan untuk tahun 1996 memberi notis bahawa 'dengan kelulusan Pihak Berkuasa Negeri, senarai nilaian yang disediakan untuk tahun 1996 yang kekal berkuat kuasa sehingga 31 Disember 2016 dengan ini dilanjutkan untuk kekal berkuat kuasa sehingga 31 Disember 2019'. Pada 17 Mei 2018, MDHS mengeluarkan kepada UPB satu notis pindaan senarai nilaian bawah s. 144 Akta, memaklumkan UPB bahawa MDHS akan meminda senarai nilaian dan bahawa, berkuat kuasa dari 1 Julai 2018, nilai tahunan pegangan UPB adalah RM17,351,300 dan kadar tahunan yang dikenakan adalah RM173,513. UPB diberi sehingga 11 Jun 2018 untuk membuat bantahan terhadap perkara-perkara yang dinyatakan dalam notis tersebut. Sebelum notis pindaan bertarikh 17 Mei 2018, MDHS tidak pernah mengenakan atau mengutip kadar daripada UPB dan sehingga notis pindaan, tidak pernah memaklumkan UPB tentang kewujudan senarai nilaian, sama ada disemak atau dipinda. UPB membantah notis pindaan menyatakan, antara lain, MDHS tidak pernah memperuntukkan apa-apa perkhidmatan atau kemudahan berkaitan dengan pegangan UPB. Walaupun UPB membantah, MDHS mengekalkan keputusannya dan dengan itu, UPB membayar kadar tahunan yang dikenakan bawah bantahan dan merayu ke Mahkamah Tinggi. Mahkamah Tinggi memutuskan bahawa (i) notis pindaan tersebut batal dan *ultra vires* Akta; dan (ii) pindaan pada senarai nilaian untuk 1996 untuk memasukkan pegangan UPB yang sebelum ini ditaksir bawah Akta, tidak sah. Hakim Mahkamah Tinggi mendapati bahawa terdapat ketidakpatuhan keperluan-keperluan prosedur seperti yang diperlukan oleh ss. 137 dan 141 Akta yang menjurus pada dapatan ketaksahan. Oleh itu, rayuan ini.

Diputuskan (menolak rayuan dengan kos)
Oleh Mary Lim HMP menyampaikan penghakiman mahkamah:

(1) Kadar yang boleh dikenakan oleh mana-mana pihak berkuasa tempatan terhadap apa-apa pegangan dalam bidang kuasanya perlu 'adil dan wajar' dan setakat itu, pihak berkuasa tempatan boleh membahagikan kawasannya pada dua atau lebih bahagian dan mengenakan kadar berbeza berdasarkan kegunaan sebenar pegangan tersebut atau sebahagian pegangan yang berkenaan. Oleh itu, kadar dikenakan atas pegangan-pegangan yang terletak dalam bidang kuasa setiap pihak berkuasa tempatan. 'Pegangan' didefinisikan secara spesifik dalam s. 2. Kecuali untuk pegangan-pegangan yang dikecualikan daripada pengenaan kadar, kesemua pegangan lain dalam bidang kuasa pihak berkuasa tempatan tertakluk pada pengenaan kadar. Pegangan yang termasuk dalam senarai nilaian dikenali sebagai 'pegangan berkadar'. Seksyen 2 mentafsir 'pegangan berkadar' sebagai pegangan yang tertakluk pada pembayaran sesuatu kadar yang dibuat dan dilevi bawah Akta. Sehingga satu pegangan terangkum bawah senarai nilaian, itu kekal sebagai pegangan.

(2) Penentuan kadar tahunan sebenar oleh Pihak Berkuasa Tempatan distruktur secara statutori. Setiap pihak berkuasa tempatan diperlukan secara jelas oleh s. 137 Akta untuk menyediakan senarai nilaian untuk kesemua pegangan yang tidak dikecualikan daripada kadar. Bawah s. 141, pihak berkuasa tempatan diperlukan untuk memberi notis, bukan hanya melalui pemberitahuan *Warta*, tetapi melalui pengiklanan dalam dua akhbar tempatan, satu daripadanya dalam bahasa kebangsaan bahawa ia telah menyediakan atau mengangkat senarai nilaian tersebut. Satu proses pemeriksaan dan bantahan awam dengan tempoh masa wajar akan dijalankan. Setelah disediakan, senarai nilaian sepatutnya bertahan selama lima tahun. Setiap lima tahun, setiap pihak berkuasa tempatan diperlukan secara mandatori bawah s. 137(3) untuk menyediakan senarai nilaian baharu mengandungi butiran sama seperti dalam ss. 137(1)(a) hingga (d). Sehingga senarai nilaian baharu disediakan dan dilengkapkan, senarai nilaian sedia ada kekal berkuat kuasa sehingga digantikan oleh senarai nilaian baharu. Apabila ini tidak dapat dilakukan, dan dihujahkan, atas alasan kukuh dan wajar, Pihak Berkuasa Negeri boleh melanjutkan tempoh lima tahun untuk penyediaan dan penyelesaian senarai nilaian baharu bawah s. 137(2) Akta.

(3) Tiada pihak berkuasa tempatan yang boleh menggunakan senarai nilaian untuk tempoh yang tidak dapat ditentukan dan bawah apa-apa samaran atau pembacaan salah kuasa-kuasa dan kewajipannya. Menjadi satu-satunya tanggungjawab untuk memastikan penyediaan senarai nilaian dan penyelesaian senarai tersebut menurut proses mandatori seperti yang dinyatakan dalam Bahagian XV Akta sebelum pihak berkuasa tempatan diberi kuasa memungut apa-apa kadar. Ini berlanjut pada kuasa

meminda senarai nilaian. Pindaan pada senarai nilaian hanya boleh dilakukan atas alasan-alasan dan dalam hal keadaan yang dinyatakan dalam s. 144(1) Akta dan kecuali untuk keadaan bawah s. 144(1)(e), pindaan hanya boleh dilakukan berkaitan pegangan berkadar. Sebaik dipinda sewajarnya bawah s. 144, senarai nilaian sedia ada, bersama-sama dengan pindaan, akan kekal berkuat kuasa sehingga itu digantikan oleh senarai nilaian baharu.

(4) Dalam rayuan ini, senarai nilaian yang disediakan pada 14 Disember 1995 untuk tahun 1996 dimaklumkan, selepas 21 tahun, untuk kekal berkuat kuasa sehingga 31 Disember 2016, dan melalui notifikasi sama, akan dilanjutkan untuk terus kekal berkuat kuasa sehingga 31 Disember 2019. Senarai nilaian tersebut dipinda dua tahun kemudian, pada 17 Mei 2018, bawah s. 144 Akta untuk memasukkan pegangan UPB, yang tidak terdapat dalam senarai nilaian 1996 berikutan pelaksanaan penyempadanan semula. Selain daripada dua pelaksanaan 'lanjutan' dan 'pindaan', MDHS tidak pernah melengkapkan, apatah lagi menyediakan, apa-apa senarai nilaian baharu selepas 1996.

(5) Apa yang dibayangkan bawah s. 137(3) adalah lanjutan masa untuk penyediaan dan penyelesaian senarai nilaian baharu; bukan pelanjutan kesahan senarai nilaian sedia ada. Notis lanjutan jelas tanpa mandat atau kuat kuasa undang-undang kerana tiada lanjutan tempoh masa untuk menyediakan dan menyelesaikan senarai nilaian baharu untuk keseluruhan tempoh antara 1996 dan 2019 atau sehingga pemakluman pada 2016. Kegagalan menyelesaikan senarai nilaian baharu untuk kesemua tempoh itu adalah ketidakpatuhan serius peruntukan-peruntukan jelas dan mandatori Akta tersebut. Senarai nilaian 1996 mengalami ketidakgiatan teruk pada pihak MDHS dan sememangnya telah luput. Oleh itu, notis lanjutan bertarikh 11 Julai 2016 memohon untuk melanjutkan senarai nilaian untuk tahun 1996 sehingga 2019 jelas tidak sah dan tiada kesan.

(6) Pindaan yang dilakukan pada 2016 untuk memasukkan pegangan UPB juga tidak sah kerana pegangan UPB adalah pegangan baharu dan tidak terangkum dalam definisi pegangan berkadar seperti yang ditakrifkan bawah s. 2. Walau apapun, MDHS tidak mengkhususkan bawah bahagian mana dalam s. 144(1)(a) hingga (f) pindaan tersebut dipohon. Mahkamah berpuas hati bahawa pindaan tersebut tidak terangkum bawah mana-mana bahagian ini. Walaupun Pihak Berkuasa Negeri boleh melakar semula sempadan mana-mana pihak berkuasa tempatan dalam bidang kuasanya, pihak berkuasa tempatan tidak boleh mula mengenakan kadar atas pegangan yang sehingga ini di luar bidang kuasa mereka. Pihak berkuasa tempatan bertanggungjawab untuk mengemukakan senarai nilaian baharu setiap kali ada pelaksanaan penyempadanan

semula atau sekurang-kurangnya untuk menunggu sehingga senarai nilaian baharu yang berikutnya sebelum boleh mengenakan kadar atas pegangan-pegangan yang baharu terangkum bawah bidang kuasanya.

Case(s) referred to:

Affin Bank Bhd v. Jamaludin Jaafar; The Association Of Banks In Malaysia & Anor (Interveners) [2019] 7 CLJ 541 FC ***(refd)***

Majlis Daerah Dungun v. Tenaga Nasional Bhd [2006] 2 CLJ 1078 CA ***(refd)***

Majlis Perbandaran Seremban v. Tenaga Nasional Bhd [2020] 10 CLJ 715 FC ***(refd)***

Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal [2019] 8 CLJ 433 FC ***(refd)***

Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2020] 1 CLJ 1 FC ***(refd)***

Shalimar Malay Plc v. Majlis Daerah Kuala Selangor [2015] 10 CLJ 766 HC ***(not foll)***

Syarikat Cahaya Muda Perak (Oil) Sdn Bhd lwn. Majlis Daerah Tapah [2017] 1 LNS 1213 HC ***(refd)***

Tenaga Nasional Bhd v. Majlis Daerah Hulu Terengganu [2014] 9 CLJ 149 FC ***(refd)***

Tenaga Nasional Bhd v. Ong See Teong & Anor [2010] 2 CLJ 1 FC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 76(4), 96

Local Government Act 1976, ss. 2, 3, 4(3), 14, 39, 127, 129, 130(2), (3), 132, 133, 134, 135, 137(1)(a), (b), (c), (d), (2), (3), 140, 141, 142(1)(a), (b), (c), (d), (e), (2), 143(1), (2), (3), 144(1)(a), (b), (c), (d), (e), (f), 145(5), 146, 147, 148, 149, 150, 151, 156

For the appellant - Yusfarizal Yussof & Khairul Nizam Mohd Masnan; M/s Dzulkifli Jaafar Nizam & Co

For the respondents - Anand Raj, Foong Pui Chi & Abhilaash Subramaniam; M/s Shearn Delamore & Co

[Editor's note: Appeal from High Court, Shah Alam; Summons No: BA-16A-1-07-2018 (affirmed).]

Reported by S Barathi

JUDGMENT

Mary Lim FCJ:

[1] Three questions of law were posed in appeal directly from the High Court to the Federal Court by virtue of s. 145(5) of the Local Government Act 1976 (Act 171). All three questions concern the power of the appellant, as the local authority for the local authority area of Hulu Selangor, to impose rates on holdings located within its area of local authority under Part XV of Act 171.

[2] The appellant had imposed rates on the respondent's holding which hitherto had been excluded from the jurisdiction of the appellant. The respondent objected and appealed. On 4 July 2019, the High Court allowed the respondent's appeal.

[3] Section 145(5) of Act 171 allows any party to appeal directly to the Federal Court on questions of law. The full terms of s. 145 are as follows:

> 145(1) Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.
>
> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.
>
> (3) The local authority shall be the respondent in any appeal under this section.
>
> (4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive.
>
> (5) From the decision of the High Court either party may appeal on questions of law to the Federal Court whose decision shall be final and conclusive.

[4] The three questions of law posed are:

i. Sama ada pegangan Responden dikategorikan sebagai suatu pegangan berkadar atau suatu pegangan yang dikecualikan daripada kadar.

ii. Sama ada pegangan yang dimasukkan ke dalam kawasan kerajaan tempatan melalui persempadanan semula dikategorikan sebagai pegangan yang dikecualikan dari kadar sebelum ia disenaraikan di dalam senarai nilaian atau pindaan kepada senarai nilaian.

iii. Sama ada Responden berhak untuk bergantung kepada Senarai Nilaian bagi tahun 1996 untuk tahun taksiran 2018 atau mana-mana taksiran selepas itu.

[5] After hearing parties by way of a virtual platform, necessary in view of the current pandemic which has spared no corner of the world including this nation, and at that material time upon the cooperation and consent of the parties (the law has since been amended to facilitate such means – see ss. 3, 15A and 16(aa) of the Courts of Judicature (Amendment) Act 2020 (Act A1621)), we unanimously dismissed the appeal and answered all three questions in the following terms.

Brief Facts

[6] First, some background facts for context so that the appeal may be better understood. These facts are summarised from the succinct grounds of the learned High Court Judge and the cause papers.

[7] The respondent, United Plantations Berhad (UPB) is the registered owner of 2,889 hectares of holdings located at Lot 1899, Ladang Lima Belas, Mukim Ulu Bernam, District of Ulu Selangor, upon which it carries on an oil palm plantation business (UPB holdings). A

[8] By letter dated 3 July 2018, the appellant, Majlis Daerah Hulu Selangor (MDHS) informed UPB that it was going to impose an annual value and annual rates on the UPB holdings. It is however, not in dispute that prior to this letter, UPB was unaware that its holdings fell within the local authority area of MDHS. B

[9] According to MDHS, it had decided to revise its valuation list for 1996 (valuation list). A Notice of a New Valuation List 1996 was published in the Government of Selangor *Gazette* by way of notification dated 21 December 1995 informing that the valuation list will be revised on 30 December 1995. The UPB holdings were neither rated nor included in the valuation list at this point in time. C

[10] By Government of Selangor *Gazette* Notification dated 26 June 2008, the boundaries of the Hulu Selangor District Council were altered to include the UPB holdings with effect from 3 July 2008. D

[11] On 11 July 2016, MDHS issued a notice of extension of valuation list prepared for the year 1996 giving notice that "with the approval of the State Authority, the valuation list prepared for the year 1996 which shall remain in force until 31 December 2016 is hereby extended to continue to remain in force until 31 December 2019". E

[12] On 17 May 2018, MDHS issued to UPB a notice of amendment of valuation list under s. 144 of Act 171, informing UPB that it was amending the valuation list and that with effect from 1 July 2018, the annual value of the UPB holdings shall be RM17,351,300 and that the annual rates imposed shall be RM173,513. UPB was given until 11 June 2018 to object against the matters set out in the notice. F

[13] It is not in dispute that prior to the notice of amendment of 17 May 2018, MDHS never imposed or collected rates from UPB. It is also not in dispute that up till this notice of amendment, MDHS never informed UPB of the existence of the valuation list, whether revised or amended. G

[14] By letter dated 1 June 2018, UPB informed MDHS of its objections to the notice of amendment citing *inter alia* that MDHS never provided any services, facilities or amenities in relation to the UPB holdings. By letter dated 3 July 2018, MDHS informed UPB that it was maintaining its decision on the annual value of the UPB holdings following the hearing of UPB's objections on 13 June 2018. MDHS did not elaborate or explain its reasons for the decision. H I

[15] On 12 July 2018, UPB paid the annual rate imposed under protest. It also appealed to the High Court, an avenue provided under s. 145 of Act 171.

The Appeal At The High Court

[16] At the High Court, UPB complained that MDHS had failed to follow the mandatory rules of due process; and that there were substantive merits in the appeal.

[17] In respect of the first complaint, the principal argument was that MDHS had no power to include the UPB holdings into the valuation list in the manner that it did, that is, *vide* notice of amendment. As for the substantive grounds, UPB argued that MDHS had no factual and legal justification for its valuation as there was no valuation report prepared for the UPB holdings. The High Court was urged to reject a valuation report from MDHS on the basis that it was only prepared after legal proceedings had been initiated. UPB also argued that since MDHS did not provide any services, facilities or amenities which in any event, UPB claimed it was already itself providing as required to do so under the Workers' Minimum Standards of Housing and Amenities Act 1990; and that it could not possibly be subjected to two conflicting statutory regimes.

[18] The learned High Court Judge agreed with the submissions of learned counsel for UPB, holding that the notice of amendment is void and *ultra vires* Act 171; that the amendment to the valuation list for 1996 to include the UPB holdings which were not previously rated under Act 171 was illegal. The learned judge found that there was non-compliance of the procedural requirements as mandated by ss. 137 and 141 of Act 171 which then occasioned the finding of invalidity.

[19] Specifically, MDHS was found to have not complied with ss. 137 and 141 in the following respects:

(i) in the absence of any extended period determined by the State Authority, the valuation list for 1996 had expired after five years, that is, in 2001;

(ii) the valuation list for 1996 was never replaced with a new valuation list in accordance with s. 137 of Act 171; in fact, there was no evidence of approval of the State Authority under s. 137(3) to extend the valuation list for 1996;

(iii) MDHS failed to prepare a new valuation list in 2001 or extend the valuation list for 1996 before its expiry in 2001;

(iv) the notice of extension dated 11 July 2016, done more than 20 years later cannot revive the valuation list for 1996;

(v) MDHS failed to notify UPB as required under s. 141 of Act 171.

[20] In relation to the substantive grounds, the learned judge similarly agreed with UPB that with the absence of a valuation report, there was no evidence showing what ought to be the "estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes in order for the annual rates to be determined and fixed". Accordingly, the notice of amendment and all MDHS's decisions in relation to the UPB holdings were without justification or basis. The further ground on the need for the existence of services, amenities or facilities to be provided and that there were conflicting statutory regimes was however, rejected by the High Court.

Submissions Of The Parties

[21] MDHS appealed to the Federal Court, also invoking s. 145(5) of Act 171. Learned counsel for MDHS submitted that the learned judge erred in finding MDHS had failed to follow mandatory rules of due process as there was clear evidence that the valuation list for 1996 had been extended to 2019 in which case that valuation list could be amended to include the UPB holdings; that in any event, UPB had no basis for complaint as the UPB holdings were valued using the valuation list for 1996.

[22] The present case was argued to be distinguishable from the earlier Federal Court decisions of *Tenaga Nasional Bhd v. Majlis Daerah Hulu Terengganu* [2014] 9 CLJ 149 (*Tenaga Nasional*) and *Syarikat Cahaya Muda Perak (Oil) Sdn Bhd lwn. Majlis Daerah Tapah* [2017] 1 LNS 1213 (*Syarikat Cahaya Muda Perak*).

[23] In *Tenaga Nasional*, the Federal Court had held that the local authority was obliged to do a new valuation list since the previous list had not been extended. In the present appeal, the valuation list for the year 1996 had been extended to 2019 in which case, MDHS could amend the valuation list for the year 1996 pursuant to s. 144 of Act 171 in order to add the UPB holdings to that list. The learned judge was said to have ignored evidence in the form of a notice clearly stipulating that "the valuation list prepared for the year 1996 which shall remain in force until 31 December 2016 is hereby extended to continue to remain in force until 31 December 2019".

[24] In their written submissions, learned counsel for MDHS reasoned that MDHS "cannot be expected to produce each and every one of the extension notice going all the way back to 20 over years"; suffice if the "latest notice of such extension is given. In fact, the court ought to take judicial notice of the fact that when the notice stated that the 1996 valuation list was in force until 2016, then it should be noted that it had already been extended to such".

[25] The present appeal was also said to be distinguishable from *Syarikat Cahaya Muda Perak*. In that case, the High Court held that the local authority was required to come out with a new valuation of the plaintiff's property that had come under the local authority's jurisdiction following a re-boundary exercise. We were urged to follow instead the decision in *Shalimar Malay Plc v. Majlis Daerah Kuala Selangor* [2015] 10 CLJ 766 (*Shalimar Malay Plc*) where following a re-boundary exercise, additional holdings of the appellant there were included in the jurisdiction of the respondent through a notice to amend an existing valuation list. This was allowed by the High Court on the basis of s. 4(3) of Act 171 which empowered State Authorities to alter boundaries of any local authority; that with the power to impose rates under s. 127 and authority to amend valuation lists under s. 144(1)(f), "the respondent was within its rights and jurisdiction to make such amendment to the valuation list and the rates". Learned counsel for MDHS submitted that this decision was authority for the proposition that new holdings could be included in existing valuation lists without having to make a new valuation list altogether, especially after having regard to s. 144(1)(e) which provides for new holdings to be included where new titles have been issued to such holdings. And, this is what MDHS has done in the present facts/appeal, MDHS added the UPB holdings to the valuation list for the year 1996 and, though done in 2018, had valued the holdings based on the valuation list for the year 1996.

[26] MDHS placed significant reliance on s. 144(1), contending that this provision allows local authorities to amend valuation lists "for any other reason whatsoever any rateable holding has not been included in the valuation list" in which case, it stands to reason that any rateable holding can be added to an existing valuation list through an amendment of the valuation list.

[27] To that end, learned counsel for MDHS suggested that the decision in *Syarikat Cahaya Muda Perak* had been decided *per incuriam* when the learned judge there held that "apart from para. (e) of s. 144(1), the paras. (a)- (f) only allow amendment of holdings that are already rated". However, as seen in *Shalimar Malay Plc*, new holdings may be included under para. (f) to s. 144(1); that in fact s. 144(1) permits inclusion or addition of new holdings "for whatever reason if it was not included in the first place". And, since the UPB are rateable holdings within the meaning of Act 171, MDHS was entitled to amend the valuation list for the year 1996 to include such holdings.

[28] Finally, MDHS took the position that the High Court had no jurisdiction and/or basis to decide that the rates that MDHS had imposed on the UPB holdings were not justified or had no basis. As decided in *Majlis Daerah Dungun v. Tenaga Nasional Bhd* [2006] 2 CLJ 1078, MDHS "has a wide discretion to determine such rates by using whatever method of valuation that appears appropriate to arrive at the annual value".

[29] Learned counsel for UPB re-emphasised the importance of following the mandatory rules of process, that the failure to do so was fatal rendering the imposition of rates on the UPB holdings, invalid. The process under Act 171 required MDHS to issue a new valuation list once every five years or within such extended period as the State Authority may determine. Since MDHS had admittedly not done this but had instead amended the valuation list for the year 1996 to include the UPB holdings, this clearly violated ss. 137 and 141. At any rate, the amendment exercise purportedly done under s. 144(1) was also invalid as aside from failing to specify which particular reason or ground in ss. 144(1)(a) to (f) was relied on, the circumstances presented in the case of UPB holdings did not permit of such an exercise.

Our Decision

[30] Local authorities, without exception, are creatures of statute and this is evident from the terms of Act 171. In s. 3 of Act 171 is the establishment of local authority areas for local authorities to administer, defining their boundaries and status, whether such authorities be municipal councils or district councils; and in s. 4, providing suitable or appropriate names for such local authorities. These local authorities are for all intents and purposes, local governments with their attendant powers, duties and responsibilities set out in Act 171.

[31] As with all local governments, revenue is essential for their activities and to aid towards the carrying out of any of their duties or purposes prescribed under Act 171 or under any other written law. However, there must be clear express powers for that purpose properly ascribed by law. Article 96 of the Federal Constitution expressly provides that "no tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law". Although Act 171 is federal law passed pursuant to art. 76(4) of the Federal Constitution because it was "expedient for the purpose only of ensuring uniformity of law and policy to make a law with respect to local government", it does not change the fact that the relevant provisions of Act 171 must be strictly construed.

[32] Part of the revenue of local authorities is raised from rates imposed on holdings located within the area of the local authority – see Part V of Act 171. This is evident from the terms of s. 39 which reads as follows:

> **Revenue of the local authority**
>
> 39. The revenue of a local authority shall consist of:
>
> (a) all taxes, rates, rents, licence fees, dues and other sums or charges payable to the local authority by virtue of the provisions of this Act or any other written law;
>
> (b) all charges or profits arising from any trade, service or undertaking carried on by the local authority under the powers vested in it;

A (c) all interest on any money invested by the local authority and all income arising from or out of the property of the local authority, movable and immovable; and

(d) all other revenue accruing to the local authority from the Government of the Federation or of any State or from any statutory body, other local authority or from any other sources as grants, contributions, endowments or otherwise.

B

[33] More specifically, the power to impose rates is set out in Part XV of Act 171. Part XV contains extensive provisions dealing with how rates are to be assessed and levied.

C **[34]** Section 127 in Part XV provides that the "local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any D other written law". The rates referred to in s. 127 endure only for a period not exceeding 12 months and are payable "half-yearly in advance by the owner of the holding" – see s. 133.

[35] The rates that any local authority may impose on any holding within its jurisdiction is only that which is "just and proper", and to this end, local E authorities may divide its area into two or more parts and impose differential rates due to the actual usage of the holding or part of the holding concerned – see s. 129. Rates are thus imposed on holdings located in the jurisdictions of each local authority.

F **[36]** "Holdings" are specifically defined in s. 2 to mean:

> any land, with or without buildings thereon, which is held under a separate document of title and in the case of subdivided buildings, the common property and any parcel thereof and, in the case of Penang and Malacca, "holding" includes messuages, buildings, easements and hereditaments of any tenure, whether open or enclosed, whether built on G or not, whether public or private, and whether maintained or not under statutory authority.

[37] There are holdings which are exempted from the imposition of rates; for instance, holdings or part of holdings which are used exclusively as public places of religious worship, burial grounds, and public schools and not for H any pecuniary profits – see ss. 134 and 135. Apart from these exempted holdings, all holdings within the jurisdiction of the local authority are thus subjected to the imposition of rates.

[38] Holdings which are included in the valuation list are known as I "rateable holdings". Section 2 defines a 'rateable holding' to mean a holding which is subject to the payment of a rate made and levied under this Act. Until a holding falls within the valuation list, it remains a holding.

[39] In short, rates are assessed and imposed on any landed property which carries a document of title. Under s. 146, any rates imposed by the local authority are, "until so paid shall, subject to the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed". The non-payment of any rates has serious implications to the owner or occupier of the holding concerned, not just under the National Land Code but as evidenced from ss. 14 to 156 of Act 171.

[40] Consequently, the assessment and imposition of any rates on any holdings must necessarily adhere to the regime expressly emplaced by Act 171. The phrase, "just and proper" in s. 129 means too, what it says, it is not arbitrary but dependent on such basis as provided in Act 171. The process or regime is fairly clear and precise as to what needs to be done, and the language is generally in imperative terms.

[41] Amongst the many provisions is s. 130 which stipulates that rates are assessed "upon the annual value of holdings or upon the improved value of holdings as the State Authority may determine". In either case, sub-ss. 130(2) and (3) go on to limit those rates. For instance, in the case of rates assessed upon the annual value of holdings, such rates "shall not exceed thirty-five per centum of the annual value in the case of the rates imposed under s. 127; and five per centum of the annual value in the case of the rates imposed under s. 132". Where the holdings have an improved value, the rates assessed shall not exceed five per centum of the improved value in the case of rates imposed under s. 127; or one per centum of the improved value in the case of rates imposed under s. 132 – see s. 130(3).

[42] The actual determination of annual rates by the State Authority is also not in the least, arbitrary but statutorily structured. Towards this end, each local authority is expressly required by s. 137 to prepare a valuation list for all holdings which are not exempted from rates. The object of such a valuation list is rather obvious for without such a list, both owners and the local authorities would not know where to begin. No owner or occupier will know if any rate is payable on their holding to the appropriate local authority; and how much is payable. Correspondingly for the local authority, there is authorisation to impose and collect what is undeniably revenue.

[43] Section 137 reads as follows:

Preparation of Valuation List

137(1) The local authority **shall** cause a Valuation List of all holdings not exempted from the payment of rates to be prepared containing:

(a) the name of the street or locality in which such holding is situated;

(b) the designation of the holding either by name or number sufficient to identify it;

A (c) the names of the owner and occupier, if known;

(d) the annual value or improved value of the holding.

(2) The Valuation List together with the amendments made under section 144 **shall** remain in force until it is superseded by a new Valuation List.

B (3) A new Valuation List which **shall** contain the same particulars as in subsection (1) **shall** be prepared and completed once every five years or within such extended period as the State Authority may determine.

(emphasis added)

[44] The assistance of owners or occupiers of holdings within the C jurisdiction of the local authority may be sought in the preparation of such a valuation list. This is evident from s. 140 where the failure to furnish returns of the area, situation, quality, use and rent or any information concerning the relevant holding, if asked by the local authority, carries penal consequences.

D **[45]** The preparation of the valuation list does not stop once it is ready. Under s. 141, the local authority is expected to give notice not just by *Gazette* notification but by way of advertisement in two local newspapers one of which must be in the national language that it has prepared or adopted such a valuation list. A public inspection and objection process with appropriate E time-periods is then conducted.

[46] Pursuant to s. 142(1), any person aggrieved on any of the following grounds in (a) to (e) is entitled to put in a written objection within the time prescribed for the revision of the valuation list. And, under s. 142(2), the local authority is obliged to enquire into all objections whilst the person F objecting is allowed an opportunity of being heard either in person or by an authorised agent. There is a process of appeal following decisions at such enquiries and that process under s. 145 is the very process under which the present appeal was first taken up at the High Court.

[47] Once the valuation list has been properly prepared according to the G terms as discussed above, such list is supposed to endure for five years. Every five years, each local authority is mandatorily required under s. 137(3), to prepare a new valuation list containing the same particulars as in ss. 137(1)(a) to (d); namely the name of the street or locality in which such holding is situated; the designation of the holding either by name or number sufficient H to identify it; the names of the owner and occupier, if known; and, the annual value or improved value of the holding. Until that new valuation list is prepared and completed, the existing valuation list remains in force until it is superseded by a new valuation list – see s. 137(2). In other words, it continues to subsist until superseded. In the preparation of the new valuation I list, the process as prescribed in ss. 137, 141 and 142 must be complied with.

[48] In addition, under s. 143, with the approval of the State Authority, the local authority is mandatorily required to confirm such valuation list with or without any amendment or revision on or before the thirty-first day of December of the year preceding the year in which any valuation list is to come into force. All things being equal, we understand this means that in the fifth year, the local authority would be carrying out such confirmation exercise. That valuation list so confirmed shall be deemed to be the valuation list until such time as it is superseded by another valuation list – see s. 143(1). There is also an opportunity to object to at the confirmation exercise – see ss. 143(2) and (3).

[49] As apparent from the terms of s. 137, it is the duty and obligation of every local authority to prepare and complete a valuation list. That duty and obligation is not one of choice as evident from the presence of the word, "shall". This duty must also be attended to once every five years. Where that is not achievable, then, it must be within the time as extended by the State Authority which is the State Government. Such process is necessary as revenue is being collected from members of the public. There are also penal consequences for any refusal to furnish returns sought by the local authority or if false information is given to the local authority which is preparing such a valuation list – see s. 140. Non-payment of rates properly imposed by the local authority may also lead to the far-reaching consequences such as attachment and subsequent sale of the relevant holdings as rates are treated as first charges on the holdings – see ss. 146 to 151.

[50] Consequently, a new valuation list must be prepared and completed once every five years. Put another way, a valuation list has a statutory life span of five years. A new valuation list has to be prepared and completed to replace or supersede the subsisting valuation list before that life span expires. Where that cannot be done and arguably it must be for cogent and proper reasons, the State Authority may extend that period of five years for the preparation and completion of the new valuation list. It is the period during which the new valuation list is to be prepared and completed which the State Authority is empowered to extend. Section 137(2) is not power to extend the life-span of the existing valuation list. It is power conferred on the State Authority to extend the time for the preparation and completion of a new valuation list.

[51] Until the new valuation list is prepared and completed, s. 137(2) categorically states that "[T]he valuation list together with the amendments made under s. 144 shall remain in force until it is superseded by a new valuation list". The continued application of the existing valuation list is thus envisaged by statute and there is no requirement for the local authority or even the State Government to make a specific decision to like effect. And, it is in these critical respects that MDHS has misinterpreted the meaning and intent of s. 137 and from there misapplied the provisions of Act 171.

[52] In substance therefore, a new valuation list must always be prepared and completed within the time prescribed. No local authority may use a valuation list for an indeterminable period and under any guise or misguided reading of its powers and obligations. It is their single responsibility to see to the preparation of a valuation list and to complete such list in accordance with the mandatory process as laid down in Part XV of Act 171 before the local authority is authorised to collect any rates. This extends to the power of amendment of the valuation list.

[53] Under s. 144, the valuation list may be amended for the reasons and in the circumstances prescribed therein:

> 144(1) Where by reason of:
>
> (a) a mistake, oversight or fraud the name of any person or the particulars of any rateable holding which ought to have been inserted in or omitted from the Valuation List, has been omitted from or inserted in the Valuation List, as the case may be, or any rateable holding has been insufficiently or excessively valued or for any other reason whatsoever any rateable holding has not been included in the Valuation List;
>
> (b) any building erected, modified, altered, demolished or rebuilt, or other improvements made upon a rateable holding the value thereof has been increased;
>
> (c) any building or part of a building being demolished or any other works being carried out on the rateable holding the value thereof has been decreased;
>
> (d) any rateable holding which has been included in a joint valuation and which in the opinion of the Valuation Officer ought to have been valued separately or otherwise;
>
> (e) the issue of any new titles in respect of any holdings;
>
> (f) any change to the rateable holding effected by any law relating to planning as a result of which the value of the holding has been increased or decreased,
>
> the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.
>
> (2) Notice shall be given to all persons interested in the amendment of a time, not less than thirty days from the date of service of such notice, at which the amendment is to be made.
>
> (3) Any person aggrieved by the amendment of the Valuation List on any of the grounds specified in section 142 may make objection in writing to the local authority not less than ten days before the time fixed in the notice and shall be allowed an opportunity of being heard in person or by an authorised agent.

(4) Any amendment made under this section may, at the discretion of the local authority, have regard to the level of annual values or improved value prevailing as at or about the time the current Valuation List was prepared.

(5) Any amendment made in the Valuation List in accordance with this section shall be confirmed by the local authority.

(6) Where on account of any amendment in the Valuation List the rate payable in respect of any holding is enhanced, reduced or extinguished, the new rate shall be payable, or the rate shall cease to be payable, from the commencement of the next half year or such earlier date as the local authority may determine.

[54] Two important observations about the power to amend the valuation list.

[55] First, an amendment may only be undertaken for the reasons and in the circumstances specified in s. 144(1). This is evident from the specificity in s. 144(1) as opposed to a generality in its terms.

[56] Second, save for the circumstances under s. 144(1)(e), the amendment may only be in respect of a rateable holding. As pointed out earlier, a rateable holding is different from a holding in that it is a holding which is already subject to the payment of a rate made and levied under this Act. Until it is so subjected, the holding remains only a holding.

[57] Similar views to this effect were expressed in the recent decision of *Majlis Perbandaran Seremban v. Tenaga Nasional Bhd* [2020] 10 CLJ 715 where this court opined:

[27] From the definition section of the words "rateable holding", we are of the opinion that for a holding to be considered as a "rateable holding", it must be subject to payment of a rate 'made and levied under the Act'. The local authority must first evaluate whether or not the holding in question is subjected to the imposition of rate. Any holding which is not listed in the Valuation List is deemed to be considered as being exempted from the imposition of rate. The definition of the phrase "rateable holding" as shown above, in our view, makes it clear that the amendment to the Valuation List can only be made in respect of the properties that have been subjected to the payment of the rate made and levied when the Valuation List or revised Valuation List was prepared under subsection 137(1) or (3) of the Act but not otherwise.

[58] The Federal Court took the position that where the holding is not listed in the valuation list, such holding is "deemed to be exempted from the imposition of rates" after applying the principle of harmonious construction as explained by the Federal Court in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2020] 1 CLJ 1; that "each provision or part of a provision must be read in its immediate context

and in the context of the Act as a whole", as reminded by this court in *Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal* [2019] 8 CLJ 433. We are in full agreement with the view expressed.

[59] Thus, amendments may be made to an existing valuation list when for example there is an improvement to a rateable holding; or there has been a demolition, erection, modification, alteration or rebuilding of a building or part of a building in the rateable holding. In either case, the value of the rateable holding is affected (ss. 144(1)(b) and (c)). Similarly, in the case of amendment under ss. 144(1)(d) and (f); once again, affecting the value of the rateable holding.

[60] These observations apply equally in the case of an amendment pursuant to s. 144(1)(a), that is where it is by reason of "a mistake, oversight or fraud the name of any person or the particulars of any rateable holding which ought to have been inserted in or omitted from the valuation list, has been omitted from or inserted in the valuation list, as the case may be, or any rateable holding has been insufficiently or excessively valued or for any other reason whatsoever any rateable holding has not been included in the valuation list". The presence of the words "for any other reason whatsoever" does not change the underlying requirement that the holding must first and foremost, be a rateable holding before an amendment may be made to the valuation list to correct any name or particulars of that rateable holding which is occasioned by mistake, oversight or fraud. MDHS cannot rely on this phrase "for any other reason whatsoever" to licence amendments for any reason under the sun or as it thinks or wishes, unfettered and arbitrary; including amendments caused by a re-boundary exercise as was the case in this appeal.

[61] In *Majlis Perbandaran Seremban v. Tenaga Nasional Berhad*, this court applied the principle of *ejusdem generis*, that "the general expression is to be read as comprehending things of the said kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended" (see *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1 applied in *Affin Bank Bhd v. Jamaludin Jaafar; The Association Of Banks In Malaysia & Anor (Interveners)* [2019] 7 CLJ 541):

> [33] … Although paragraph 144(1)(a) of Act 171 allows the Valuation Officer to amend the Valuation List for any other reason whatsoever, that does not mean that the Valuation Officer can do so without having regard to the specific reasons enumerated in paragraph 144(1)(a) to (f) of Act 171. It must be borne in mind that "reasons to amend" are not only found in paragraph (a) of subsection 144(1) but also in paragraphs (b) to (f) as well. If the Legislature wishes to give so much room for the Valuation Officer to amend the Valuation List, then we say there is no need to specify reasons as stated in paragraphs (a) to (f) of subsection 144(1).

[34] Therefore, we are of the view, that the correct interpretation to the words "or for any other reason whatsoever" is to confine the reasons to reasons of the same class as mentioned in paragraph 144(1)(a) of Act 171. When general language follows a series or more specific terms, the class of things referred to by the general language may be read down to refer to narrower class of things to which the specific terms all belong. (See: Judicial Commission of New South Wales, '*Statutory Interpretation Principles and Pragmatism for a New Age*' (Education Monograph, 2007) at p 129.

[35] The rule of statutory construction or interpretation known as *ejusdem generis* principle can be expounded through the following *dictum* of Lord Campbell in *R v. Edmundson* (1859) 28 LJM.C 213 at page 215 wherein His Lordship stated the following:

I accede to the principle laid down … that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.

[36] In *Affin Bank Bhd v. Jamaludin Jaafar, The Association of Banks in Malaysia & Anor (Interveners)* [2019] 7 CLJ 541, this Court referred to the case of *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1 … .

[62] Where amendments are within the permitted terms, the valuation officer may amend the valuation list accordingly and the amended rates will thence become the payable rates. Once properly amended under s. 144, the subsisting valuation list together with the amendments will remain in force until it is superseded by a new valuation list – see s. 137(2).

[63] Rates are therefore not imposed in a *laissez-faire* fashion and cannot at all be imposed arbitrarily. On the contrary, it is structured and dictated by the provisions of Act 171. Given this elaborate due process which we see as in accord with art. 96 of the Federal Constitution, it is imperative that the prescribed process must be complied with. Any default or failure, if not within any of the permissible limits of the legislation must, in our mind, render the relevant decision liable to be set aside.

[64] In the present appeal, the facts disclosed that there was only one valuation list prepared on 14 December 1995 for the year 1996 – see p. 88 of R/Appeal Jil. 3. From the notification dated 14 December 1995 and gazetted on 21 December 1995, that valuation list shows that it is actually a revised valuation list.

[65] Regardless, on 11 July 2016, almost twenty-one years later, that valuation list prepared for the year 1996 was notified as "shall remain in force until 31 December 2016" and by the same notification, "extended to continue to remain in force until 31 December 2019" – see p. 89 of R/Appeal Jil. 3:

AKTA KERAJAAN TEMPATAN 1976
(Akta 171)

LOCAL GOVERNMENT ACT 1976
(Act 171)

NOTIS PERLANJUTAN SENARAI LANJUTAN YANG DISEDIAKAN UNTUK TAHUN 1996

NOTICE OF EXTENSION OF VALUATION LIST PREPARED FOR THE YEAR 1996

MAJLIS DAERAH HULU SELANGOR
HULU SELANGOR DISTRICT COUNCIL

Menurut Seksyen 137 dan Seksyen 141, Akta Kerajaan Tempatan 1976 (Akta 171), adalah dengan ini diberitahu bahawa kebenaran Pihak Berkuasa Negeri, Senarai Nilaian yang disediakan untuk tahun 1996 yang mana ianya hendaklah berkuatkuasa sehingga 31 Disember 2016 adalah dengan ini dilanjutkan terus berkuatkuasa sehingga 31 Disember 2019.

In pursuant to section 37 and section 141, of the Local Government Act 1976 (Act 171), notice is hereby given that with the approval of the State Authority, the Valuation List prepared for the year 1996 which shall remain in force until 31 December 2016 is hereby extended to continue to remain in force until 31 December 2019.

Bertarikh: 11 Julai 2016

Dated: 11 July 2016

...
MOHAMAD ZAIN BIN HAMID
Yang Dipertua
Majlis Daerah Hulu Selangor
President
Hulu Selangor District

[66] That same valuation list was then amended under s. 144 of Act 171 two years later on 17 May 2018, to include the UPB holdings which was not in the 1996 valuation list, following a re-boundary exercise *vide* Government of Selangor *Gazette* Notification dated 26 June 2008. With effect from 3 July 2018, the UPB holdings came within the jurisdiction of the appellant:

MAJLIS DAERAH HULU SELANGOR
JALAN BUKIT KERAJAAN, 44000 KUALA KUBU BHARU, SELANGOR
TEL: 0360641331/60641432 FAKS: 03-60643991
E-MEL: mdhs@mdhs.gov.my LAMAN WEB: www.mdhs.gov.my

NOTIS PINDAAN SENARAI NILAIAN
(Mengikut Seksyen 144, Akta Kerajaan Tempatan 1976)

Nama Dan Alamat	
United Plantations Berhad Jenderata Estate Teluk Intan 36009 Teluk Intan Perak	**No. Notis:** 2018-001181 **Tarikh:** 17/05/2015 **No. Akaun:** T02058121

Adalah dengan ini diberitahu bahawa Majlis Daerah Hulu Selangor akan meminda Senarai Nilaian bagi pegangan yang tersebut di bawah ini yang dikuatkuasakan pada 01/07/2018.

Alamat Harta	
Lot 1899, Ladang Lima Belas, Hulu Bernam 35800 Slim River Perak	**Nilai Tahunan Lama (RM):** 0.00 **Nilai Tahunan (RM):**17,351,300.00 **Kadar %:** 1.00 **Cukai Taksiran (RM):** 173,513.00 **(Setahun)**

Sesiapa yang tidak berpuashati dengan penilaian ini seperti alasan-alasan yang terkandung di dalam Seksyen 142, Akta Kerajaan Tempatan 1976 bolehlah membuat bantahan secara bertulis kepada Yang Dipertua 'Majlis Daerah Hulu Selangor' dan bantahan hendaklah sampai kepada Majlis sebelum 11/06/2018.

Yang Dipertua

'Majlis Daerah Hulu Selangor'.

*Sila nyatakan nombor akaun apabila membuat bantahan.

*Sila jelaskan cukai taksiran sebelum membuat bantahan. Kegagalan membayar cukai taksiran mengakibatkan bantahan tidak dipertimbangkan.

*Notis ini cetakan komputer dan tidak perlu ditandatangani.

[67] It is beyond dispute that other than these two exercises of "extension" and "amendment", MDHS never completed let alone prepared any new valuation list after 1996. Put simply, for over twenty years, MDHS imposed rates and collected revenue based on that single valuation list prepared for

A the year 1996 and completed way back in 1995. As we have seen from the provisions of Act 171, that would be a serious dereliction of its duties and responsibilities.

[68] What MDHS did instead was to issue this notice of extension of the valuation list prepared for the year 1996 dated 11 July 2016 (notice of B extension); the contents of which must be carefully examined. This notice of extension states:

(i) that the valuation list prepared for the year 1996 "shall remain in force until 31 December 2016";

C (ii) that the valuation list which has been said to remain in force from 1996 to 2016 "is hereby extended to continue to remain in force until 31 December 2019".

[69] We have found that the proper operation of Part XV of Act 171 means that the life span of any valuation list is typically five years. Every five years, D a new valuation list has to be prepared and completed. During its period of validity, that valuation list may be revised or amended following the clear process laid down.

[70] Where the new valuation list cannot be prepared and completed within the five-year period, that time period may be extended. Until a new E valuation list is prepared and completed, the existing valuation list will remain in force until it is superseded by the new valuation list. What is envisaged under s. 137(3) is an extension of the time for the preparation and completion of a new valuation list; not an extension of the validity of the existing valuation list.

F

[71] What the notice of extension sought to do is, in our view, clearly without mandate or force of law. Applying the proper process as discussed earlier to the underlying facts as evidenced by the notification, it is apparent that there was no extension of the time period for preparing and completing G a new valuation list for the entire period between 1996 and 2019 or until this notification in 2016, whether asked for by MDHS or as determined by the State Authority. In fact, MDHS did not even assert the presence of such extension.

[72] In our view, the non-completion of a new valuation list for that whole H period is a serious non-compliance of the clear and mandatory provisions of Act 171. At all times, a new valuation list must always be prepared to replace or supersede an existing valuation list, whether amended, revised or in its original pristine form every five years. Although we would not go so far as to say that a valuation list lapses immediately in the absence of any extended I period determined by the State Authority in view of s. 137(2); on the peculiar facts in this appeal, the valuation list of 1996 has suffered from the gross inactivity on the part of MDHS and has indeed lapsed. The learned judge had

opined that the valuation list of 1996 had lapsed because it had expired after five years, that is, in 2001, and had never been replaced with a new valuation list in accordance with s. 137; and that "the notice of extension dated 11 July 2016, done more than 20 years later cannot revive the valuation list for 1996". A

[73] The unexplained failure of MDHS to prepare and complete a new valuation list every five years or even seek an extension of the period for such preparation and completion from the State Authority is reprehensible as MDHS, as the local authority charged with jurisdiction and mandate to collect rates and thereby revenue under the Federal Constitution must carry out its functions within the limits and terms as prescribed by Act 171. All things being equal and in the absence of any extensions of time by the State Authority, a period of over twenty years would have seen at least four new valuation lists prepared and completed under the terms of s. 137(3). In this case, MDHS did none but instead imposed that same valuation list prepared for the year 1996 over and over again for twenty years. Surely the intent of s. 137(3) is to see a new valuation list replacing or superseding the existing valuation list every five years; and not, as was the efforts of MDHS, to effectively extend that same list again and again. B C D

[74] Learned counsel for MDHS had argued that the notice of extension of 2016 had extended the valuation list and this distinguishes its facts from those in *Tenaga Nasional*. With respect, we disagree. As repeatedly pointed out, this notice of 2016 did not extend the period for preparation of a new valuation list as MDHS rightly should be doing; it simply notified that the valuation list of 1996 "shall remain in force". In our view, this effectively puts MDHS in the same position as the local authority in *Tenaga Nasional*, where this court had held that the local authority was obliged to do a new valuation list since the previous list had not been extended. E F

[75] We are therefore of the firm view that this notice of extension dated 11 July 2016 seeking to extend the valuation list for the year 1996 effectively until 2019 is clearly invalid and of no effect and on this ground alone, the appeal must be dismissed. G

[76] Further, we are of the view that the amendment conducted in 2016 to include the UPB holdings is also invalid because the UPB holdings is a new holding and does not fall within the definition of rateable holding as defined in s. 2 and explained in *Majlis Perbandaran Seremban v. Tenaga Nasional* Berhad. In any case, MDHS did not specify under which particular limb of ss. 144(1)(a) to (f) that the amendment was sought. From the facts, we are nevertheless satisfied that the amendment does not fall under any of these limbs. H I

[77] For the same reasons set out above, we disagree with the view taken in *Shalimar Malay Plc* that a new holding may be added to an existing valuation list through an amendment exercise following a reboundary authorised under s. 4(3). Although State Authorities may redraw the boundaries of any local authority within its jurisdiction, local authorities cannot begin to impose rates on holdings which hitherto were outside their jurisdiction. The approach taken in *Syarikat Cahaya Muda Perak*, that the local authority is obliged to come out with a new valuation list whenever there is a re-boundary exercise or at least to wait till the next new valuation list before it may impose its rates on holdings which newly fall within its jurisdiction, is thus consistent with the views expressed herein.

[78] For the reasons discussed above, we answer all three questions posed by MDHS in the negative.

[79] Consequently, we find no merits in the appeal and the appeal is thus dismissed with costs of RM50,000 subject to allocatur. We agree with the reasoning of the learned judge and the decision of the High Court is hereby affirmed.